Supreme Court, U.S.
FILED
JUL 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-31

In the Supreme Court of the United States

OCTOBER TERM, 1989

FRIENDS OF WARWICK POND AND HOXSIE ALSO WARWICK LAND TRUST, PAUL HULING JEANNE M. FOSTER, EILEEN NAUGHTON AND KATHLEEN PREISS,

PETITIONERS,

v.

CHILDREN'S FRIEND AND SERVICE, INC., FRANK P. SHERRY, R & F ASSOCIATES, RHODE ISLAND CENTRAL CREDIT UNION AND JOHN DOES, ONE THROUGH FIVE,

RESPONDENTS,

AND JAMES O'NEIL, IN HIS CAPACITY AS RHODE ISLAND ATTORNEY GENERAL,

ADDITIONAL PARTY - RESPONDENT.

RESPONDENTS' R & F ASSOCIATES AND RHODE ISLAND CENTRAL CREDIT UNION'S BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND

JOEL D. LANDRY, ESQ.
Counsel of Record

LEO T. CONNORS, ESQ.
CONNORS & KILGUSS
56 Pine Street
Providence, RI 02903
(401) 751-3900
Attorneys for Respondents

Blanchard Press, Inc., Boston, Mass.—Law Printers (617) 426-6690

43pp

I.

QUESTIONS PRESENTED

I. Whether This Petition Should Be Denied For Failure To Raise A Federal Question Or Constitutional Issue Before The State Court.

II. Whether the Rhode Island Supreme Court Properly Sustained The Summary Judgment Entered For The Respondents-Defendants In The Superior Court.

III. Whether The Rhode Island Supreme Court Properly Sustained The Superior Court Judgment Dismissing This Matter.

IV. Whether Petitioners Should Be Sanctioned For Filing A Frivolous Petition.

TABLE OF CONTENTS

	Page
Questions Presented	1
Table of Authorities	IV
Citation To Opinion Below	1
Jurisdiction	2
Statement of the Case	2
Reasons for Denying the Writ of Certiorari	4
I. Whether This Petition Should Be Denied For Failure To Raise A Federal Question Or Constitutional Issue Before The State Court	7
II. Whether The Rhode Island Supreme Court Properly Sustained The Summary Judgment Entered For The Respondents-Defendants In The Superior Court	8
III. Whether The Rhode Island Supreme Court Properly Sustained The Superior Court Judgment Dismissing This Matter	14
IV. Whether Petitioners Should Be Sanctioned For Filing A Frivolous Petition	17
Conclusion	18
Respondent's Appendix	RA-1
Order/Decision of Rhode Island Supreme Court dated February 3, 1989	RA-1
Order/Decision of Rhode Island Supreme Court denying reargument dated March 13, 1989	RA-3
Decision/Judgment of Rhode Island Superior Court dated July 1, 1988	RA-4
Rhode Island Supreme Court show cause Order presenting three questions to be answered by the parties	RA-6
1912 Deed	RA-8
1916 Deed	RA-10
1951 Deed	RA-12
Petitioners' Rule 19.6 Notice	RA-17

Page

Attorney General O'Neil's Memorandum in Opposition to Appellants' Petition for Reargument .. RA-18

TABLE OF AUTHORITIES

Adickes v. *S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1969) 14
Baker v. *Carr*, 369 U.S. 186, 204 (1962) 13
Berberian v. *Solomon*, 122 R.I. 259, 405 A.2d 1178 (1979) 11, 12
Blackstone Valley Chamber of Commerce v. *Public Utilities Commission*, 452 A.2d 931 (R.I. 1982) 13
Bolling v. *Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed 884 (1954) 14
Bradley v. *Fisher*, 80 U.S. 335, 20 L.Ed 646 (1871) 14
Cardinale v. *Louisiana*, 394 U.S. 437, 438 (1969) 8
Citizens to Preserve Overton Park, Inc. v. *Volpe*, 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971) 13
Goldberg v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) 14
Greene v. *McElroy*, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959) 14
Logan v. *Zimmerman Brush Company*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265, (1982) 13
Matunuck Beach Hotel, Inc. v. *Sheldon*, 399 A.2d 489 (R.I. 1979) 12
McCarthy v. *McAloon*, 79 R.I. 55, 83 A.2d 75 (1951) 11
Mullane v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950) 14
Nichola v. *John Hancock Mutual Life Insurance Company*, 471 A.2d 945 (R.I. 1984) 12
Sierra Club v. *Morton, Secretary of the Interior*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 ..... 9, 11, 13
Stearns v. *Newport Hospital*, 27 R.I. 305 (1905) 17

Page

Stump v. *Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) 14

Taveira v. *Solomon*, 528 A.2d 1105 (R.I. 1987) 15

Town of South Kingstown v. *Wakefield Trust*, 48 R.I. 27 14

Webb v. *Webb*, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981) 7, 8

Statutes:

5 U.S.C.

Sec. 701 9

R.I.G.L.

Sec. 18-9-5 9

Rules of the Supreme Court of the United States

Rule 21 17

Rule 29 17

R.I. Superior Court Rules of Civil Procedure

Rule 56 ..... 5, 6, 12

Rule 56(c) 5, 8

In the
Supreme Court of the United States

OCTOBER TERM, 1989

FRIENDS OF WARWICK POND AND HOXSIE
ALSO WARWICK LAND TRUST, PAUL HULING
JEANNE M. FOSTER, EILEEN NAUGHTON AND
KATHLEEN PREISS,
PETITIONERS,

v.

CHILDREN'S FRIEND AND SERVICE, INC.,
FRANK P. SHERRY, R & F ASSOCIATES,
RHODE ISLAND CENTRAL CREDIT UNION AND
JOHN DOES, ONE THROUGH FIVE,
RESPONDENTS,

AND JAMES O'NEIL, IN HIS CAPACITY AS
RHODE ISLAND ATTORNEY GENERAL,
ADDITIONAL PARTY - RESPONDENT.

RESPONDENTS' R & F ASSOCIATES AND RHODE ISLAND CENTRAL CREDIT UNION'S BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND

Citation to Opinion Below

The decision and order of the Rhode Island Supreme Court (unreported) is reproduced in the respondents' appendix at pages 1-3. The decision and judgment of the Rhode Island Superior Court (also unreported) is reproduced at pages 4-5 of respondents' appendix.

The Rhode Island Supreme Court denied Petitioners' appeal in *Friends of Warwick Pond* v. *Children's Friend and Service, Inc.*, C.A. No. 88-426, on February 23, 1989 and also denied petition for reargument on March 13, 1989.

Jurisdiction

Respondents assert that Petitioners have failed to raise a federal question or constitutional issue as basis for their Writ of Certiorari and as such, they are improperly before this Court.

Statement of the Case

This is not a class action suit as represented in petitioner's brief. This matter rests on a Summary Judgment granted to Respondents by the Rhode Island Courts for lack of standing by Petitioners, as well as a lack of subject matter.

Petitioners attempted to challenge respondent's deeds by utilizing a *cy pres* application over a non trust. Respondent's title in the entire claim evidences transfers in fee simple without restriction. (R.A. 8-13). The Rhode Island Superior Court Judge granted Summary Judgment and specifically held that there was no *cy pres* application warranted (R.A. 4-5). The Rhode Island Supreme Court directed in a show cause order for dismissal (R.A. 6-7) that the parties answer three questions as to why the appeal should not be summarily decided. Petitioners and Respondents submitted briefs and argued to the Supreme Court. The Court concluded that cause has not been established and that Petitioners had no standing to bring the complaint and thus, denied the appeal and affirmed the Superior Court Judgment. The title therefore is good.

It has been observed:

> "Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket?"[1]

At the commencement of suit, Petitioners filed a *lis pendens* with the Recorder of Deeds of the City of Warwick which stayed on record for approximately 18 months. Respondents were prevented from developing and utilizing their property due to the cloud on title which was created. When the Rhode Island Supreme Court rendered its opinion denying Petitioners' appeal, Respondents made request for the removal of the *lis pendens* and Petitioners' attorney refused, forcing Respondents to apply to the Superior Court of the State of Rhode Island for removal of the *lis pendens* — which was granted.

It should be further observed that Petitioners removed two Respondents from this case, namely St. Timothy's Church Corporation (Warwick) and Woloohojian Realty Corporation, by filing Petitioners' Rule 19.6 Notice. (R.A. 14). It is interesting to note that the two designated Respondents hold title to their respective property out of the same chain of title involving the subject property — St. Timothy's Corporation acquiring from Respondent Children's Friend and Service, Inc., after Children's Friend and Service, Inc., acquired the larger tract of land in 1951. Woloohojian Realty Corporation acquired its parcel from St. Timothy's Church Corporation on a subdivision.

Petitioners failed to represent this information in the body of their brief, rather they informed the Court through an independent Notice on the basis of No Interest. Respondents contend that Petitioners' position of acquiescence in the title to these two Respondents proves validity of title in Respondent Children's Friend and Service, Inc., as well as R&F Associates.

---

[1] Abraham Lincoln — Nicolay-Hay II p. 140-143.

Reasons For Denying the Writ of Certiorari

Petitioners alleged that they brought this action to protect their homes, their neighborhood and their environment, however, they failed to establish that they had any standing whatsoever to bring this action. There is nothing within the framework of this petition to establish a constitutional issue in light of their allegations. The Rhode Island Supreme Court held that there was a lack of standing by the Petitioners to bring this action and the question was squarely raised by the Court that Petitioners had to establish authority giving them a cause of action against the Respondents. Petitioners ignored this responsibility — by completely side-stepping that issue. It is all well, fine, and good to reference Tom Wiker as to environmental struggles, whatever connection that has to the question. The short answer is that they are complete interlopers with respect to the title involved.

The issues here are focused solely on the responsibility of the Rhode Island Supreme Court to establish its own procedure. Petitioners are dealing with "mirrors" by alleging that they demonstrated in spades the "concrete adversity" that sharpens issues, the very objective which Rhode Island's "injury in fact" test is designed to ensure. Rhode Island Superior Court gave the plaintiffs ample opportunity to demonstrate that they had standing which they failed to do, together with the fact that they misrepresented to the court that the deeds in question were subject to restriction or trust application. The Superior Court specifically held that the deeds in question conveyed absolute title in fee simple, and as such, there being no trust application or restrictive hold on the use of the title, there was no need to use a *cy pres* application to transfer title. The Rhode Island Supreme Court sustained this position and further held as a matter of law that Petitioners lacked standing to bring a cause of action against the defendants. This order was very clear and direct. Petitioners have not been denied due process or equal protection in that Petitioners have no claim to this

title under any circumstances whatsoever and in fact, the sole purpose for bringing this action was to interfere with the respondent, R&F Associates, right to hold title or to develop this land in accordance with the accepted zoning application of the City of Warwick. Petitioners failed to raise any federal or constitutional issue at any stage before the Rhode Island Courts.

It should be pointed out that the Petitioners have abused the court system by interfering with the respondent, R&F Associates right to develop their own land and have peaceful enjoyment of title. Petitioners immediately placed a *lis pendens* upon commencing an action in 1987 and they refused to remove that cloud on title even after judgment of the Rhode Island Supreme Court was entered in February of 1989. Petitioners have caused the Respondents to expend large sums of money to defend this action, as well as caused delay in development, accrual of finance charges and interest expenses by holding the mortgage for an extended period of time without the opportunity to sub-divide and sell. Interestingly, the Petitioners interfered with defendant's commercial development during that period of time when development was at its peak and it is no longer in such demand.

Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure provide a mechanism to expedite court proceedings for the purposes of entering judgment for the prevailing party when it is shown that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Rule 56(c)). Our rule also provides that "A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Petitioners ask for fair play in their petition, however, when one analyzes the fundamental fairness of what is suggested, Petitioners have failed to establish as a matter of law, that they have a right to sue. Petitioners were requested on repeated occasions both in the Superior Court and in the Rhode Island

Supreme Court to establish their connection to the title, as it appears that they are total strangers to the title, being neither buyer nor a legally interested party. The underlying fact is that the Petitioners had no connection whatsoever either to the benefit through Children's Friend and Service or as a matter of title history to be in a position to contest this title. Their argument to apply the *cy pres* doctrine had no bearing on this particular matter because the deed was never established as anything other than a title held in fee simple by Respondents, Children's Friend and Service, to use for their sole purposes. Children's Friend and Service had made the decision to sell the property in order to liquidate that asset. The resultant funds are to be used consistently, with their overall purposes. Petitioners allege on page 12 of their brief that they have survived a threshold motion challenging their right to protect "Lakeside" (subject property) when, in fact, this is not so. Plaintiffs misconstrue the procedure that had developed up to the granting summary judgment pursuant to Rule 56. Petitioners had not survived the right to sue by virtue of prevailing on a right to discovery, rather, they had failed to establish in any way that they had standing to bring this action. Petitioners knew full well that they lacked that necessary standing as they persistently avoided responding to that question by the courts. Petitioners further tried to defer and deflect the standing issue by creating a scenario that there was an issue concerning title held in trust when, as an undisputed matter of fact, the respondent, Children's Friend and Service, had received this property without any restriction whatsoever by bargain and sale deeds. No trust or other restrictive transfer is indicated on the face of the deeds. What they are clearly attempting to do is to avoid this inconvenient fact. A camouflage, their basic posture, is to prevent a development of a piece of property which they contend will have a serious monetary, recreational and environmental damage to their home and community yet, they have failed to establish that as a matter of law they have a right of any nature to access to that property. It is patently clear this is not any specie of public land.

I. WHETHER THIS PETITION SHOULD BE DENIED FOR FAILURE TO RAISE A FEDERAL QUESTION OR CONSTITUTIONAL ISSUE BEFORE THE STATE COURT.

It is a rule of the United States Supreme Court that jurisdiction would not be granted if a federal question or a constitutional issue were not raised in the State Court. In *Webb* v. *Webb*, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981) this Court held with regard to a full faith and credit issue that this issue has not been preserved in the State Court. The court stated:

> "Because this case comes to this court from state court, the relevant jurisdictional statute is 28 U.S.C. @ 1257. As applied to the circumstances of this case, the statute requires that in the state courts petitioner have "specially set up or claimed under the Constitution . . . of . . . the United States" that right which she now seeks to have this court enforce. 28 U.S.C. @ 1257(3). Similarly our Rule 21.1 (h) requires the petitioner to "specify the stage in the proceedings, both in the court of the first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court."
> *Webb* v. *Webb*, supra, at page 495.

The court noted in *Webb* v. *Webb*, supra, the lack of a federal question mentioned in the lower court or expressly passed on. The court emphatically stated, "It is a long-settled rule that the jurisdiction of this court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system. New York ex rel. *Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928); *Oxley Stave Co.* v. *Butler County*, 166 U.S. 648, 655 (1897)." *Webb*

v. *Webb*, supra, at page 496-497. This same principle was followed in *Cardinale* v. *Louisiana*, 394 U.S. 437, 438 (1969). The Court in *Webb* v. *Webb*, supra, at page 499-500 points out that:

> "... this principal of comity requires 'a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.'"

The Court in *Webb* v. *Webb*, supra, noted the point that the states should have the "opportunity to pass upon and correct" alleged violations as well as the state courts exercising their authority for adjudicating the issue.

Petitioners here have failed to identify any federal question or constitutional issue argued in the State Court. Rather, they attempt to "federalize" state rules of procedure in order to create their forum. Rhode Island rules of Civil Procedure are not the Federal Rules of Civil Procedure and this is an insult to the Court.

II. Whether The Rhode Island Supreme Court Properly Sustained The Summary Judgment Entered For The Respondents-Defendants In The Superior Court.

Rule 56(c) of the Rhode Island Rules of Civil Procedure specifically states in part:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

The fundamental issue that the Rhode Island Supreme Court addressed is as a matter of law, what standing and right did the appellants have to bring this suit? The court pointed out that only the Attorney General of the State of Rhode Island has such standing by statute (R.I.G.L. 18-9-5). The Attorney General has indicated that he finds no fault in the sale of the subject realty by Children's Friend and Service.

Petitioners seek to place themselves in a posture of the *Sierra Club* v. *Morton, Secretary of the Interior*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 as raised on page 14 of Petitioners' brief. Petitioners allege that they brought suit to prevent serious monetary, recreational and environmental damage to their homes and community, however, they overlook one important fact which is that the land in question has no relationship to them. The said land is not public or municipal property, or property dedicated for public use. Rather, the land in question is privately held property in fee simple that happened to be owned by a non-profit corporation. In *Sierra Club* v. *Morton*, supra, the subject land was used almost exclusively for recreational purposes and there was a move to create a site for recreational development including skiing facilities and other like activities. Petitioners attempted to block the project by involving a judicial-review provision of the Administrative Procedures Act, 5 U.S.C. 701, et seq. The District Court granted a preliminary injunction and the Ninth Circuit reversed that decision with the observation that there was "no allegation in the complaint that members of the Sierra Club would be affected by the actions of [the respondents] other than the fact that the actions are personally displeasing or distressful to them". The court went on to note "We do not believe such club concern without a showing of more direct interest can constitute standing in the legal sense sufficient to challenge the exercise of responsibilities on behalf of all the citizens by two cabinet level officials of the government acting under congressional and constitutional authority." The Ninth Circuit specifically held that the Sierra Club has not made an

adequate showing of irreparable injury and likelihood of success on the merits to justify issuance of a preliminary injunction. The United States Supreme Court granted certiorari to review the questions of federal law. The Supreme Court noted in *Sierra Club* v. *Morton*, that:

> "Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy," *Baker* v. *Carr*, 369 U.S. 186, 204, as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Flast* v. *Cohen*, 392 U.S. 83, 101.

In addressing the issue of "injury in fact" tests in *Sierra Club* v. *Morton*, the Supreme Court specifically pointed out that the test "requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." The court further went on to state:

> "But a mere "interest in a problem," no matter how long-standing the interest and no matter how qualified the organization is in evaluating the problem, it is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special

> interest" organization, however small or short-lived. And if any group with a bone fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so."

The court then noted in *Sierra Club* v. *Morton*, supra, "As we conclude that the Court of Appeals was correct in its holding that the Sierra Club lacked standing to maintain this action, we do not reach any other question presented in the petition, and we intimate no view on the merits of the complaint." The court then affirmed judgment.

In the case of *Berberian* v. *Solomon*, 122 R.I. 259, 405 A.2d 1178 (1979) Rhode Island addressed the issue of "injury in fact". The plaintiffs in *Berberian*, supra, attempted to enjoin payments of state funds to retired members of the Rhode Island General Assembly who were receiving benefits through a pension system. The Court noted that "Although recent United States Supreme Court decisions have liberalized standing requirements to the point of allowing certain suits to protect the public interest, the Court still insists that the representative allege his personal stake in the controversy — his own injury in fact — before he will have standing to assert the broader claims of the public at large." The Rhode Island Supreme Court in *Berberian*, supra. cited *McCarthy* v. *McAloon*, 79 R.I. 55, 83 A.2d 75 (1951) for the following proposition:

> "In this state it was long ago settled that 'Suits for the public should be placed in public and responsible hands' *O'Brien* v. *Board of Aldermen*, 18 R.I. 113, 116. The public officer vested with that authority is the attorney general of the state. Only he may sue to redress a purely public wrong except in those instances where one of the public who is injured has a distinct personal legal interest different from that of the public at large***." *Id.* at 62, 83 A.2d at 78.

The Court went on further in *Berberian*, supra, to note "This court, like the Supreme Court, requires a complaint to contain specific statements from which standing may be inferred."

The Rhode Island Supreme Court in *Matunuck Beach Hotel, Inc.* v. *Sheldon*, 399 A.2d 489 (R.I. 1979) indicated that in order to sustain standing, the party has to show injury and the issue will be between whether there is injury and no injury.

Petitioner has miscalled and misapplied the Rule 56 standard by referencing it as a Federal Rule of Civil Procedure. Citing *Nichola* v. *John Hancock Mutual Life Insurance Company*, 471 A.2d 945 (R.I. 1984) (See petitioner's Petition for Certiorari on page 2). *Nichola*, supra, specifically held "Summary judgment should be granted only if an examination of all the pleadings, affidavits, admissions, answers to interrogatories, and other materials, viewed in the light most favorable to the party opposing the motion, reveals no genuine issue of material fact. Citing *Estate of Bassett* v. *Stone*, R.I., 458 A.2d 1078, 1081 (1983); *Saltzman* v. *Atlantic Realty Co.*, R.I., 434 A.2d 1343, 1345 (1981); *Marandola* v. *Hillcrest Builders, Inc.*, 102 R.I. 46, 49, 227 A.2d 785, 787 (1967) There is no absolute requirement under Rule 56 that the nonmoving party submit an affidavit opposing a motion for summary judgment. *Steinberg* v. *State*, R.I., 427 A.2d 338, 340 (1981). However, when no such opposing affidavit is filed, the nonmoving party may not rest upon the allegations contained in the pleadings alone to establish the existence of a genuine issue of material fact. *Nedder* v. *Rhode Island Hospital Trust National Bank*, R.I., 459 A.2d 960, 962 (1983); *Ardente* v. *Horan*, 117 R.I. 254, 257, 366 A.2d 162, 164 (1976) The nonmoving party has an affirmative duty to set forth specific facts showing that there exists a genuine issue of fact to be decided at trial. *Id.* at 257, 366 A.2d at 164." In *Nichola* v. *John Hancock Mutual Life Insurance Company*, supra, the court specifically found that "Examining the defendants' memorandum in this light, we

find no material, factual issue existed, and summary judgment was properly granted."

In the case of *Blackstone Valley Chamber of Commerce* v. *Public Utilities Commission*, 452 A.2d 931 (R.I. 1982) the Rhode Island Supreme Court pointed out the holding in *Sierra Club* v. *Morton*, supra, by stating "[M]ere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved'***." *Sierra Club* v. *Morton*, 405 U.S. 727, 739, 92 S.Ct. 1361, 1368, 31 L.Ed.2d 636, 645 (1972). The court went on to note that the mere fact that the Petitioners were permitted to intervene before the commission does not entitle it to institute an independent suit to set aside the commission's order in the absence of resulting actual or threatened legal injury to it. The court went on and specifically found that the plaintiffs in this case lacked standing to maintain this action.

Petitioners before the bar in the instant matter, likewise lacked standing in terms of the subject property in question. They have not demonstrated in any allegation, complaint, affidavit or document that they had any right in and to the subject property. Further, there is no allegation demand or claim that there is an interference with or violation of a statutory right by way of zoning or ordinance. This petitioner has filed a frivolous action to the detriment of the Respondents herein.

Petitioners cite several cases that are highly distinguishable from their standing issue, e.g. *Baker* v. *Carr*, 369 U.S. 186, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962) (members of the General Assembly of Tennessee challenging size of representation — diluting of voting rights); *Citizens to Preserve Overton Park, Inc. et al* v. *Volpe*, 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971) (municipal public park subject to construction of a right of way); *Logan* v. *Zimmerman Brush Company*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265, (1982) (fair employment practice commission case involving discriminatory

practices with employee); *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950) (issue of notice to beneficiaries under trust by publication); *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1969) (discrimination case involving refusal to serve food); *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed 884 (1954) (issue of segregation and discrimination in public schools); *Bradley* v. *Fisher*, 80 U.S. 335, 20 L.Ed 646 (1871) (exemption of judges from liability to suit for judicial acts); *Stump* v. *Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) (judicial immunity-standards); *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) (termination of welfare benefits and eligibility issue); *Greene* v. *McElroy*, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959) (issue of governmental revocation of security clearance on government contracts).

Petitioners have cited other cases dealing with criminal law principles and issues that do not pertain to the matter at hand and therefore, are not applicable to the question before the court. The simple fact in this case is that Petitioners have failed to establish that they had any right or interest in and to the land in question and as such, they lack standing to bring this matter.

III. Whether The Rhode Island Supreme Court Properly Sustained The Superior Court Judgment Dismissing This Matter.

Petitioners argue that defendant Children's Friend & Service improperly conveyed this property to defendant Frank P. Sherry. Petitioners contend that this title was subject to court review by virtue of *cy pres* application. Petitioners overlook the material fact, which is a basis of law, that title was held by Children's Friend & Service, Inc., in fee simple. The case of *Town of South Kingstown* v. *Wakefield Trust*, 48 R.I. 27, addressed the application of *cy pres*, the court noted, "that

cy pres is utilized when property is given by a donor *in trust for a particular named purpose*, when that purpose fails or can no longer be carried out. There is no need for a *cy pres* application when the corpus can be liquidated to generate a more productive use and therefore, the trust does not fail when the corpus because the funds are being used to satisfy the purpose of the trust." When Children's Friend & Service received the subject property in 1951, and deed specifically conveyed the property in fee simple. The deed does not restrict the use of the property, nor does it create a trust application for its use. Rather, the deed conveys the land in question in fee simple absolute, with the following grant proscribed:

> "To Have and To Hold the same, with all rights, privileges and appurtenances thereunto appertaining, unto and to the use of the said Children's Friend & Service, its successors and assigns forever to be held by said Children's Friend & Service for its general use and purposes."

The language used is unambiguous, clear and not subject to interpretation.

Petitioners went so far as to allege that the 1951 decision by the Superior Court judge was controlling on every judge thereafter, however, it was noted in *Taveira* v. *Solomon*, 528 A.2d 1105 (R.I. 1987) that:

> "The doctrine of the law of the case, while certainly a practice generally to be followed, should not be used to perpetrate clear error flowing from an early erroneous ruling. See 1B Moore's Federal Practice para. 0.404 [1] at 123-24 (2d ed. 1984) "In some, the doctrine of the law of the case as applied to successive prejudgments of the trial court, is not a rule to perpetrate error and does not require a court to enter an erroneous judgment because the logic of an earlier erroneous ruling would require it. It is

> merely a practice that protects the ability of the court to build to its final judgment by cumulative rulings, with reconsideration or review postponed until after the judgment is entered." *Id.* at 126; See also 18 Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction*, para. @ 4478 at 790 (1981) ("Justice Holmes noted that law of the case doctrine 'merely expresses the practice of the courts generally to refuse to reopen what has been decided, not at limit to their powers'"). "Most recent decisions suggest that the major grounds that justify reconsideration involve an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice."

The lower court specifically found that there was no material issue of fact in dispute. The court found that the conveyance was done in fee simple without any charitable restrictions imposed upon the holding of the real estate. The Superior Court judge had noted at the time of argument that "whatever act was assumed by the previous action of the court certainly does not establish the existence of a *cy pres* doctrine". This issue was raised and argued before the Supreme Court of the State of Rhode Island and the court specifically stated "After examining the memoranda submitted by the parties and after hearing their counsel in oral argument, it is the conclusion of the court that cause has not been shown. We are of the opinion the gift of the subject real estate was unrestricted and therefore it may be sold and the proceeds may be used for general corporate charitable purposes". (R.A. 1)

It should be further noted that the State of Rhode Island through the respondent James O'Neil in his capacity as Attorney General for the State of Rhode Island, filed a pre-briefing statement with the Supreme Court of the State of Rhode Island. (R.A. 15-16) The Attorney General in his pre-briefing statement to the Supreme Court stated "The sale of a certain lot or parcel of real estate located in the City of Warwick was

well within the discretion of Children's Friend & Service, Inc., the trustees did not violate their fiduciary duty and acted in the best interest of the trust. Children's Friend & Service, Inc., held this property for its general use and purpose. It was entirely appropriate for the property to be sold and for the proceeds to be applied to the general uses and purposes of the trust." In the case of *Stearns* v. *Newport Hospital*, 27 R.I. 305 (1905) the Rhode Island Supreme Court held that the attorney general is the proper person to represent the public in any judicial inquiry into the conduct of the trustee in administering it and further the mayor of the city was not a proper person to bring suit.

In light of the court finding that the conveyance bringing title into Children's Friend & Service, Inc., was a transfer in fee simple without restriction or reservation within the deed itself, there is no basis for a *cy pres* application. In view of the fact that there is no genuine issue as to any material fact, the Respondents are entitled to judgment as a matter of law.

It is obvious that the Petitioners filed a frivolous action for the sole purposes of interfering with the land development by Respondents R&F Associates. The technique apparently is to hold up the use of the land so that economic pressures force a settlement.

IV. Whether Petitioners Should Be Sanctioned For Filing A Frivolous Petition.

It has been brought to the attention of Respondents that Petitioners requested that the Clerk not docket their petition as discussions are under way for settlement. In addition, Respondents became aware of Petitioners' petition being returned due to error.

It should be noted that Petitioners are in violation of Rule 21 and Rule 29 of this Honorable Court. Respondents contend that they have been prejudiced by the acts of Petitioners in that they have incurred expenses and costs to their detriment

as well as an undue interference with the use of their property because of this litigation.

The Respondents herein respectfully request that sanctions be imposed against Petitioners for willful interference with Respondents' rights to hold the property and to use this property with all enjoyment thereto. This matter presently before the court is completely devoid of any federal issue and Petitioners are making absolute misrepresentations as to Rhode Island adopting federal standards/access test or adopting Rhode Island (Federal) Rules of Civil Procedure. This is nothing but a masquerade to cover an improper foundation to bring this matter before this Honorable Court.

Conclusion

Petitioner's application for a Writ of Certiorari should be denied. The judgment of the Rhode Island Supreme Court should be sustained and this Honorable Court should impose sanctions on Petitioners for undue expenses incurred by Respondents.

Respectfully submitted,

JOEL D. LANDRY, ESQ.
Counsel of Record

LEO T. CONNORS, ESQ.
CONNORS & KILGUSS
56 Pine Street
Providence, RI 02903
(401) 751-3900
Attorneys for Respondents

Providence, Rhode Island
July 10, 1989

APPENDIX

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT
NO. 88-426-APPEAL.

PROVIDENCE SC

FRIENDS OF WARWICK POND ET AL.,
v.
CHILDREN'S FRIEND AND
SERVICE ET AL.

O R D E R

This matter was before the Supreme Court on an order issued to all parties to appear and show cause why the issues involved in this appeal should not be summarily decided.

This action arose out of the allegation by the plaintiffs that the defendants, Children's Friend and Service, Inc., as a successor charity holder, should not be permitted to sell certain land for private development and profit. They assert that the parcel of land was originally acquired for charitable purposes and under the doctrine of *cy pres* the proposed sale should not be permitted.

The Superior Court granted defendants' motion for summary judgment and ruled that the *cy pres* doctrine had no application. The court found that the original conveyances to defendant were made in fee simple, without any charitable restrictions whatever.

After examining the memoranda submitted by the parties and after hearing their counsel in oral argument, it is the conclusion of the court that cause has not been shown. We are of the opinion that the gift of the subject real estate was unrestricted and therefore it may be sold and the proceeds may be used for general corporate charitable purposes.

Moreover, the plaintiffs have no standing to bring the complaint in this action. Only the Attorney General has such standing. The Attorney General has indicated that he finds no fault with the sale of this realty by Children's Friend and Service.

Therefore, the appeal of the plaintiffs' is denied and dismissed, the judgment of the Superior Court is affirmed and the papers of the case are remanded to the Superior Court.

Entered as an Order of this Court this 23rd day of February 1989.

By Order,

/s/ ILLEGIBLE

MATTHEW J. SMITH
Clerk

Justice Kelleher did not participate.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT
No. 88-426-A.

PROVIDENCE SC

FRIENDS OF WARWICK POND
ET AL,
v.
CHILDREN'S FRIEND
AND SERVICE, ET AL.

ORDER

The petition to reargue is denied.

Justice Kelleher did not participate.

Entered as an Order of this Court this 13th day of March 1989.

By Order,

/s/ ILLEGIBLE
MATTHEW J. SMITH
Clerk

State of Rhode Island
Kent, SC.

Superior Court
KC 87-811

WARWICK LAND TRUST, INC.,
PAUL HULING, JEANNE M. FOSTER,
EILEEN NAUGHTON AND KATHLEEN PREISS,
v.
CHILDREN'S FRIEND AND SERVICE, INC.,
FRANK P. SHERRY, R&F ASSOCIATES,
RHODE ISLAND CENTRAL CREDIT UNION
AND JOHN DOES, ONE THROUGH FIVE,
v.
AND JAMES O'NEIL, IN HIS CAPACITY AS
RHODE ISLAND ATTORNEY GENERAL, AND
SAINT TIMOTHY'S CHURCH CORPORATION,
WARWICK AND WOLOOHOJIAN REALTY CORP.

JUDGMENT

This matter came on for hearing before the Court, Mr. Justice Bourcier presiding, on June 13, 1988, upon Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Rhode Island Rules of Civil Procedure. After hearing thereon, it is hereby

ORDERED AND ADJUDGED

1. The defendants' Motion for Summary Judgment is granted. The Court finds that the real estate in question is not subject to the application of the *cy pres* doctrine of law which pertains to trust property, and that as a consequence thereof, there remains no material issue of fact to be resolved and defendants are entitled to Judgment as a matter of law.

2. In accordance with Rule 54(b) R.C.P., Judgment for the defendants, Children's Friend and Service, Inc., and R&F Associates on their Motions for Summary Judgment will enter

upon the entry of this Judgment, the Court having determined that there is no just reason for delay.

Dated at West Warwick, Rhode Island, this 1st day of July, 1988.

Per Order,

/s/ ANTHONY PICCIRELLI
ANTHONY PICCIRELLI
Deputy Clerk

Enter:
/s/ BOURCIER, J.
BOURCIER, J.
JUSTICE
DATED: JULY 1, 1988

FILED 1988 JULY 1, 10:11 A.M.
KENT SUPERIOR COURT
ERNEST W. REPOSA, Clerk

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT
NO. 88-426-APPEAL.

PROVIDENCE SC

FRIENDS OF WARWICK POND ET AL,
v.
CHILDREN'S FRIEND AND
SERVICE ET AL.

ORDER

This case came before a single justice of this court for a pre-briefing conference in accordance with Rule 16(h) of the Rules of Appellate Procedure. The plaintiffs appeal from a summary judgment entered in the Superior Court in favor of the defendants.

After dismissing the issues with counsel and examining the pre-briefing statements filed by the parties, the justice enters the following order.

1. All parties are directed to appear before this court or a hearing panel thereof on a date to be selected in order to show cause why the issues raised by this appeal should not be summarily decided. These issues include without limiting the generality of the foregoing;
   (a) whether a question of fact exists which should have precluded the entry of summary judgment,
   (b) whether the trial justice erred as a matter of law in granting summary judgment even if no question of fact was disclosed on the record,
   (c) whether the plaintiffs had standing to challenge the conveyances,

(d) whether issues presented by the parties have been preserved for appellate review.

2. The plaintiffs may file a supplemental memorandum not exceeding fifteen (15) pages in length on or before January 16, 1989. Thereafter, defendants may file supplemental memoranda not exceeding fifteen (15) pages in length on or before February 7, 1989. Defendants may file separate memoranda or may join in one or more memoranda as they see fit. In the event that plaintiffs wish to reply to defendants' memoranda, application will be made for permission to do so.

3. Plaintiffs, by reason of intervening equities do not challenge the conveyances made to St. Timothy Church Corporation (Warwick) and thereafter the conveyance by St. Timothy Church Corporation (Warwick) to Woloohojian Realty Corp.

Entered as an Order of this Court this 29th day of November 1988.

By Order,

_____

Clerk

Enter:

/s/ WEISBERGER, J.

WEISBERGER, J.

November 29, 1988

Know all Men by these Presents,

That I, William H. P. Faunce of the City of Providence in the State of Rhode Island in consideration of the sum of ten ($10) dollars to me paid by The Providence Society for Organizing Charity, a corporation established under the laws of the State of Rhode Island and located in the City of Providence therein the receipt whereof is hereby acknowledged, do hereby remise, release, and forever QUITCLAIM unto it the said Providence Society for Organizing Charity, its successors, Heirs, and Assigns forever, all the right, title, interest, property, claim and demand, which I now have, or of right ought to have, or claim, in and to that certain estate situated on Rocky Point Road, in the Town of Warwick, County of Kent and State of Rhode Island, known as "Lake View Hotel Property" comprising the land and all buildings and improvements thereon, the said land being described as follows: Beginning at a granite bound set in the west line of the highway leading from Rocky Point to Providence, thence N 1°14'W bounding easterly on said highway three hundred twenty-one and 5/10 (321.5) feet to a stone bound and land now or lately of George Hoxsie; thence N. 80°51'W bounding northerly on said George Hoxsie land twenty-one hundred and sixty-eight (2168) feet to Great Pond Brook, thence southeasterly bounding on said Brook and Great Pond to land now or lately of Isabel W. Colburn, thence north 89°15'E bounding southerly on said Colburn's land seventy-two and 9/10 (72.9) feet to a granite bound; thence in the same line eleven hundred and forty-one and 1/10 (1141.1) feet to the first mentioned bound, containing fifteen acres, one hundred twenty-six rods, be the same more or less, Being Lot No. 5 (five) on plat entitled "Plat of the Division of Woodland belonging to the Estate of Hon. John R. Waterman, deceased, surveyed and platted by Commissioners appointed by the Hon. the Court of Probate of the Town of Warwick, by Robert W. Greene, C.E. Jan. 1883" recorded on page 47 of Book of Plats No. 2 of the land records of said Warwick.

Being the same property conveyed to this grantor by deed from Pyrce Owen dated February 26th, 1912 and recorded in said Town in Deed Book 81, at page 444.

To Have and to Hold, the same, with all the rights, privileges and appurtenances thereunto appertaining, unto and to the use of it the said Providence Society for Organizing Charity, its successors and assigns forever.

And I the aforenamed William H. P. Faunce for myself and for my heirs, executors and administrators, do covenant with the said Providence Society for Organizing Charity, its successors and assigns, that I will warrant and defend the aforedescribed premises unto the said Providence Society for Organizing Charity, its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under me.

And I, Sarah E. Faunce, wife of the said William H. P. Faunce, in consideration of the sum paid as aforesaid, do hereby release and forever quitclaim unto the said Providence Society for Organizing Charity, its successors and assigns, all my right of dower in and to the aforedescribed premises.

In Testimony Whereof, we have hereunto set our hands and seals this 31st day of October in the year of our Lord one thousand nine hundred and twelve (1912).

Signed and sealed in presence of

/s/ Henry Solomon /s/ William H. P. Faunce

State of Rhode Island /s/ Sarah E. Faunce

County of Providence. In Providence on the 31st day of October A.D. 1912 before me personally appeared the above named grantors William H. P. Faunce and Sarah E. Faunce, his wife, both of them to me known and known by me to be the parties executing the foregoing instrument and severally acknowledged said instrument, by them executed, to be their free act and deed.

Recorded Nov. 1, 1912 at 8 a.m.

Witness:

/s/ James T. Lockwood /s/ Henry Solomon

Town Clerk Notary Public

Know all Men by these Presents;

That I, Patrick Fitzpatrick of the City of Providence in the State of Rhode Island (single) hereinafter called the Grantor, in consideration of the sum of Ten (10) Dollars to me paid by the Providence Society for Organizing Charity, a corporation established under the laws of the State of Rhode Island and located in the City of Providence therein, hereinafter called the Grantee, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Grantee and its successors and assigns forever, in fee simple, That tract of land, with buildings and other improvements thereon, situated in the Town of Warwick (at or near the part called Hoxsie) and estimated to contain nineteen and ¼ (19¼) acres more or less bounding easterly on the Road from Old Warwick to Providence four hundred thirty-one (431) feet more or less southerly on land now or lately of the Grantee (otherwise known as the "Lakeside Sanitorium" land) twenty-two hundred (2200) feet more or less westerly on Great Pond Brook so called and northerly on land formerly of Cottrell F. Hoxsie (now or lately of Charles F. Frey) about twenty-two hundred (2200) feet more or less.

Being the same tract so located which formerly belonged to John N. O. Hoxsie and was conveyed by the Administratrix of his estate to this Grantor by deed recorded with the land records of said Town in Deed Book 84 at page 252.

To Have and to Hold, the aforegranted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said Grantee, and its successors and assigns forever, in fee simple.

And I, the said Grantor do hereby, for myself and for my heirs, executors, and administrators, covenant with the said Grantee and its successors and assigns that I am lawfully seized in fee simple of the said granted premises; that the same are free from all incumbrances, that I have good right, full power, and lawful authority to sell and convey the same in manner as aforesaid; that the said Grantee and its successors and assigns

shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises, and that I the said Grantor will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Grantee and its successors and assigns forever against the lawful claims and demands of all persons.

In Witness Whereof, I have hereunto set my hand and seal this 29th day of February in the year of our Lord one thousand nine hundred and sixteen (1916).

Signed and sealed in presence of

/s/ E. Tudor Gross — /s/ Patrick Fitzpatrick

State of Rhode Island — U.S. Revenue Stamps for $3.50

County of Providence. In Providence in said County on the 29th day of February A.D. 1916 before me personally appeared the above named Grantor Patrick Fitzpatrick to me known and known by me to be the party executing the foregoing instrument and acknowledged said instrument by him executed to be his free act and deed.

Recorded Mar. 2, 1916 at 8 a.m.

Witness,

/s/ James T. Lockwood — /s/ E. Tudor Gross

Town Clerk — Notary Public

Book 232 Page 251

Know all Men by these Presents,

That Family Service, Inc., a charitable corporation of the State of Rhode Island, located in the City of Providence, in said State (formerly known as Providence Society for Organizing Charity), in consideration of the sum of One Dollar ($1) to it paid by Children's Friend and Service, also a charitable corporation of said State of Rhode Island, located in said Providence, the receipt whereof is hereby acknowledged, pursuant to authority in it vested by decree of the Superior Court of the County of Providence and State of Rhode Island entered February 16, 1951, in that case entitled "*Family Service, Inc.* v. *William E. Powers, Attorney General of the State of Rhode Island*, Eq. No. 21550." does hereby give, grant, bargain, sell and convey unto the said Children's Friend and Service, its successors and assigns forever,

1. That certain estate situated on Rocky Point Road, in the town of Warwick, County of Kent and State of Rhode Island, known as "Lake View Hotel Property," comprising the land and all buildings and improvements thereon, the said land being described as follows:

Beginning at a granite bound set in the west line of the highway leading from Rocky Point to Providence, thence N. 1°, 14′ W. bounding easterly on said highway three hundred twenty-one and 5/10 (321.5) feet to a stone bound and land now or lately of George Hoxsie; thence N. 80°, 51′ W. bounding northerly on said George Hoxsie land twenty-one hundred and sixty-eight (2168) feet to Great Pond Brook, thence southeasterly bounding on said Brook and Great Pond to land now or lately of Isabel W. Colburn; thence N. 89°, 15′ E. bounding southerly on said Colburn's land seventy-two and 9/10 (72.9) feet to a granite bound; thence in the same line eleven hundred and forty-one and 1/10 (1141.1) feet to the first mentioned bound, containing fifteen acres, one hundred twenty-six rods, be the same more or less. Being Lot No. 5 (five) on

plat entitled "Plat of the Division of Woodland belonging to the Estate of Hon. John R. Waterman, deceased, surveyed and platted by Commissioners appointed by the Hon. the Court of Probate of the Town of Warwick, by Robert W. Greene, C.E. Jan., 1883," recorded on page 47 of Book of Plats No. 2 of the land records of said Warwick.

BOOK 232 PAGE 252

However bounded and described, being the same premises conveyed to Providence Society for Organizing Charity by William H. P. Faunce, by deed dated October 31, 1912, recorded in the Land Records of said Town of Warwick in Deed Book 82, at page 118.

2. That tract of land, with buildings and other improvements thereon, situated in the Town of Warwick (at or near the part called Hoxsie) and estimated to contain nineteen and ¼ (19¼) acres more or less, bounding easterly on the Road from Old Warwick, to Providence four hundred and thirty-one (431) feet more or less; southerly on land now or lately of the Grantor (otherwise known as the "Lakeside Sanitorium' land) twenty-two hundred (2200) feet more or less; westerly on Great Pond Brook so-called and northerly on land formerly of Cottrell F. Hoxsie (now or lately of Charles F. Frey) about twenty-two hundred (2200) feet more or less.

However bounded and described, being the same premises conveyed to Providence Society for Organizing Charity by Patrick Fitzpatrick, by deed dated February 29, 1916, recorded in the Land Records of said Town of Warwick in Deed Book 92 at page 60.

TO HAVE AND TO HOLD the same, with all rights, privileges and appurtenances thereunto appertaining, unto and to the use of the said CHILDREN'S FRIEND AND SERVICE, its successors and assigns forever, to be held by said Children's Friend and Service for its general uses and purposes.

IN WITNESS WHEREOF, said Family Service, Inc. has hereunto caused its name to be signed and its corporate seal to be

affixed by its officer thereunto duly authorized, and by its Board of Real Estate Managers, this 28th day of March, A.D. 1951.

The consideration is not such as to require that Federal documentary stamps be affixed.

In presence of:
ARTHUR E. ERICKSON
ALLEN W. GRIFFITHS
As to H.D.S. and P.H.G.
HENRY L. P. BECKWITH
As to C.H.P.
DAVID L. ILLEGIBLE
As to D.H.I.G.
ROBERT E. ILLEGIBLE

FAMILY SERVICE, INC.
By LAURISTON E. KNOWLTON
President
BOARD OF REAL ESTATE MANAGERS
HENRY D. SHARPE
PRESTON H. GARDINER
CLARENCE H. PHILBRICK
ROBERT H. IVES GODDARD
GEORGE H. HUDDY, JR.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 4th day of April, A.D. 1951, before me personally appeared the within named Lauriston E. Knowlton, to me known and known by me to be the President of, and one of the persons executing the foregoing instrument in behalf of, Family Service, Inc., and he acknowledged said instrument by him so executed to be his free act and deed as such president, and the free act and deed of said Family Service, Inc.

ARTHUR E. ERICKSON
Notary Public

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 28th day of March, A.D. 1951, before me personally appeared the within named Henry D. Sharp, to me known and known by me to be one of the persons executing the foregoing instrument in behalf of Family Service, Inc., and he acknowledged said instrument by him so executed to be his free act and deed and the free act and deed of said Family Service, Inc.

Nathan D. Gorff
Notary Public

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 28th day of March, A.D. 1951, before me personally appeared the within named Preston H. Gardner, to be known and known by me to be one of the persons executing the foregoing instrument in behalf of Family Service, Inc., and he acknowledged said instrument by him so executed to be his free act and deed and the free act and deed of said Family Service, Inc.

Whilton Spiller
Notary Public

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 4th day of April, A.D. 1951, before me personally appeared the within named Clarence H. Philbrick, to be known and known by me to be one of the persons executing the foregoing instrument in behalf of Family Service, Inc., and he acknowledged said instrument by him so executed to be his free act and deed and the free act and deed of said Family Service, Inc.

HENRY L. P. BECKWITH
Notary Pul.

BOOK 2 PAGE 254

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 4th day of April, A.D. 1951, before me personally appeared the within named Robert H. Ives Goddard, to be known and known by me to be one of the persons executing the foregoing instrument in behalf of Family Service, Inc., and he acknowledged said instrument by him so executed to be his free act and deed and the free act and deed of said Family Service, Inc.

LANDIS E. BROWNING
Notary Public

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 4th of April, A.D. 1951, before me personally appeared the within named George H. Huddy, Jr., to be known and known by me to be one of the persons executing the foregoing instrument in behalf of Family Service, Inc., and he acknowledged said instrument by him so executed to be his free act and deed and the free act and deed of said Family Service, Inc.

ALBIE E. LONG
Notary Public

Recorded April 9, 1951 at 9:09 a.m.
Witness: Henry M. Griffiths
City Clerk

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

FRIENDS OF WARWICK POND AND HOXSIE
ALSO WARWICK LAND TRUST, PAUL HULING,
JEANNE M. FOSTER, EILEEN NAUGHTON AND
KATHLEEN PREISS,

PETITIONERS,

v.

CHILDREN'S FRIEND AND SERVICE, INC.,
FRANK P. SHERRY, R&F ASSOCIATES,
RHODE ISLAND CENTRAL CREDIT UNION AND
JOHN DOES, ONE THROUGH FIVE,

RESPONDENTS,

AND JAMES O'NEIL, IN HIS CAPACITY AS
RHODE ISLAND ATTORNEY GENERAL

ADDITIONAL PARTY - RESPONDENT

PETITIONERS' RULE 19.6 NOTICE

SIRS:

PLEASE TAKE NOTICE that, in petitioners' belief, Saint Timothy's Church Corporation (Warwick) and Woloohojian Realty Corp., both additional parties below, have no interest in the outcome of the petition herein.

Dated: June 10, 1989

/s/ ROBERT S. STITT
ROBERT S. STITT
Counsel of Record
PEARLMAN, VOGEL & VIOLET
Blackstone Boulevard Terrace
P.O. Drawer 9007
Providence, RI 02940
(401) 726-6200
Attorneys for Petitioners

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT
C. A. No. 88-0426

PROVIDENCE SC

FRIENDS OF WARWICK POND ET AL.,
PLAINTIFFS-APPELLANTS,
v.
CHILDREN'S FRIEND AND
SERVICE ET AL.,
DEFENDANTS-APPELLEES.

APPELLEE, JAMES E. O'NEIL, IN HIS CAPACITY AS ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND'S MEMORANDUM IN OPPOSITION TO APPELLANTS' PETITION FOR REARGUMENT

Appellants are petitioning this Honorable Court for reargument from the Order of February 23, 1989 finding that the Appellants have failed to show cause why their appeal should not be dismissed.

Appellants have not raised a single additional issue in their Petition for Reargument which was not addressed previously in their Show Cause Memorandum. This Court has seldom granted a Petition for Reargument. The purpose of reargument is to afford a Petitioner an opportunity to point out matters presented in the briefs and relied upon in the original argument which he believes were overlooked or misapprehended by the Appellate Court in reviewing the case. *Brimbau* v. *Ausdale Equipment Rental*, 389 A.2d 1254, 1255 (1978); *see*, *Rhode Island Hospital Trust Company* v. *Rhode Island Covering Company*, 96 R.I. 178, 190 A.2d 219 (1963); *see also*, *Winsten* v. *Slefkin*, 88 R.I. 178 (1958). The Petitioner has failed to carry its burden of proof and has not demonstrated error in the Court's opinion.